United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
and	)	**Docket No. 20-1566**
	)	**Issued: August 31, 2021**
AIS INC, Marion, MA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 31, 2020 appellant filed a timely appeal from an August 6, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition causally related to the accepted September 15, 2019 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the August 6, 2020 decision, appellant submitted additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

FACTUAL HISTORY

On September 19, 2019 appellant, then a 22-year-old fisheries observer,[3] filed a traumatic injury claim (Form CA-1) alleging that on September 15, 2019 he sustained a right ankle strain when on a fishing vessel while in the performance of duty. He stopped work on September 21, 2019.

In a September 24, 2019 report, Amanda Walker, a physician assistant, noted that, on September 15, 2019, appellant was on a fishing boat in Alaska, the boat hit a wave as he was descending stairs and his ankle "snapped." She reviewed x-rays of his right ankle and found no acute fractures, dislocation, or obvious degenerative changes. Appellant's diagnosis was listed as sprain of right ankle, unspecified ligament, and initial encounter.

In a September 27, 2019 attending physicians report (Form CA-20), Ms. Walker noted that on September 15, 2019 appellant sustained a right ankle sprain. She marked the box "Yes" in response to whether she believed that the condition was caused or aggravated by an employment activity. Ms. Walker recommended that appellant continue in a boot and engage in limited weight bearing on the right leg. Appellant was also seen by her on October 15, 2019.

In a September 30, 2019 Form CA-20, a nurse practitioner noted that on September 15, 2019 appellant missed two steps when descending stairs and twisted his right ankle. The nurse also noted that he had sprained his joints while playing sports. An x-ray of appellant's right ankle revealed normal findings.

Ms. Walker, in a November 5, 2019 treatment note, indicated that appellant had minimal pain and had completed physical therapy. She diagnosed sprain of anterior talofibular ligament, subsequent encounter.

OWCP received physical therapy notes dating from September 26 to October 29, 2019.

In a development letter dated July 6, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him that the medical evidence must be submitted by a qualified physician and must contain a valid medical diagnosis. OWCP explained that the medical reports submitted to date were not signed by a physician. It requested a narrative medical report from appellant's treating physician that contained a detailed description of findings, a diagnosis, and an explanation as to how the claimed employment incident caused, contributed to, or aggravated a medical condition. OWCP provided 30 days for appellant to respond. No further medical evidence was received.

By decision dated August 6, 2020, OWCP denied appellant's claim. It found that appellant had not submitted medical evidence from a physician containing a medical diagnosis in connection with the accepted employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

[3] The record establishes that appellant was covered under FECA as a federal employee.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA,[4] that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[5] These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[6]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[7] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[8]

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.[9] Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[10] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[11] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was

[4] *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *See P.F.*, Docket No. 18-0973 (issued January 22, 2019); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *J.L.*, Docket No. 18-0698 (issued November 5, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[10] *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[11] *L.D.*, *id.*; *see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[12]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted September 15, 2019 employment incident.

OWCP received physical therapy reports dated September 26 to October 29, 2019; physician assistant reports dated September 24 and 27, October 15, and November 5, 2019; and a nurse practitioner Form CA-20 report dated September 30, 2019. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[13] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[14]

The Board finds that the evidence of record is insufficient to establish that the September 15, 2019 employment incident caused a right ankle condition and, therefore, fails to establish entitlement to compensation under FECA.[15] Accordingly, appellant has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted September 15, 2019 employment incident.

[12] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[13] Section 8101(2) provides that under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *see also R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA).

[14] *D.P.*, Docket No. 19-1295 (issued March 16, 2020); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *see M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *David P. Sawchuk*, *id.*

[15] *See J.L.*, Docket No. 18-1804 (issued April 12, 2019); *D.H.*, Docket No. 17-1913 (issued December 13, 2018); *see Linda I. Sprague*, 48 ECAB 386 (1997).

ORDER

IT IS HEREBY ORDERED THAT the August 6, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 31, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board